

**CANDACE MARLOW  
EXHIBIT A**

CANDACE M. MARLOWE  
JOE HOLCOMBE vs UNITED STATES OF AMERICA

June 18, 2020

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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

JOE HOLCOMBE, ET AL.,                   §  
  §  
  §  
Plaintiffs                               §  
v.   § Civil No. 5:18-cv-555-XR  
  §  
UNITED STATES OF AMERICA,           §  
  §  
Defendant                               §

\*\*\*\*\*

VIDEOTAPED ORAL DEPOSITION OF

CANDACE McKENZIE MARLOWE

JUNE 18, 2020

\*\*\*\*\*

VIDEOTAPED ORAL DEPOSITION OF CANDACE McKENZIE MARLOWE, produced as a witness at the instance of the Defendant, and duly sworn, was taken in the above-styled and numbered cause on the 18th of June, 2020, from 10:05 a.m. to 2:52 p.m., before Glenda I. Green, Certified Shorthand Reporter in and for the State of Texas, reported by Computerized Stenotype Machine, Computer-Assisted Transcription, with myself, the witness, the videographer, and the witness's attorney located at the offices of Ken Owen & Associates, 801 West Avenue, Suite 100, Austin, Texas, and all other counsel present via Zoom, pursuant to Notice; Subpoena; the Federal Rules of Civil Procedure; the First Emergency Order regarding the COVID-19 State of Disaster; and any further stated provisions on the record. Counsel also agreed off the record that the Federal Rule 30(b)(5) statement being read into the record by the court reporter could be waived.

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A P P E A R A N C E S

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A P P E A R A N C E S (Continued)

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REPORTED BY:

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CANDACE McKENZIE MARLOWE

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(SIGNATURE WAIVED)

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\* \* \* \* \*

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## REPORTER'S NOTE:

Quotation marks are used for clarity and do not necessarily indicate a direct quote.

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1 MS. WILLIS: This is the videotaped 10:05  
2 deposition of Candace Marlowe, in the matter of 10:05  
3 Joe Holcombe, et al., versus the United States of 10:05  
4 America, being heard before the United States District 10:05  
5 Court for the Western District of Texas, Civil Action 10:05  
6 No. 518-cv-555-XR. 10:05

7 This deposition is being held at 10:05  
8 Ken Owen & Associates, in Austin, Texas. Today's date 10:05  
9 is June 18th, 2020; and the time on the record is 10:05  
10 10:04 a.m. 10:05

11 My name is Taylor Willis, and I am the 10:05  
12 videographer. The court reporter is Glenda Green. 10:05

13 Counsel, will you please introduce 10:05  
14 yourselves and affiliations; and the witness will be 10:05  
15 sworn. 10:05

16 MR. FURMAN: Austin Furman, for the 10:05  
17 defendant, United States. 10:05

18 MR. SCHREIBER: Joseph Schreiber, for the 10:05  
19 plaintiffs. 10:05

20 MS. GREEN: Next? 10:06

21 MR. DEMERATH: Justin Demerath, for the 10:06  
22 plaintiffs. 10:06

23 MS. KING GARZA: And Garza, for the 10:06  
24 plaintiffs. 10:06

25 MR. MYERS: And I'm Greg Myers. I'm 10:06

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1 presenting the deponent. 10:06

2 MS. GREEN: This deposition is being 10:07

3 conducted remotely in accordance with the First 10:07

4 Emergency Order regarding the COVID-19 State of 10:07

5 Disaster. 10:07

6 My name is Glenda Green, Texas CSR 10:07

7 No. 2194. I am administering the oath and reporting the 10:07

8 deposition. 10:07

9 Ma'am, I need to swear you in. Please 10:07

10 raise your right hand. 10:07

11 CANDACE MCKENZIE MARLOWE, 10:07

12 having first been duly sworn, testified as follows, 10:07

13 to-wit: 10:07

14 MS. GREEN: Okay, Counsel. 10:07

15 MR. FURMAN: Thank you, ma'am. 10:07

16 EXAMINATION 10:07

17 BY MR. FURMAN: 10:07

18 Q. Good morning, Ms. Marlowe. Could you state 10:07

19 your full name for the record? 10:07

20 A. Candace McKenzie Marlowe. 10:07

21 Q. Thank you. 10:07

22 And you -- Can you provide me with an 10:07

23 address? If you don't want to give your home address, a 10:07

24 business address is fine. 10:07

25 A. 709 Generations Drive, Suite 410, 10:07

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1 as well, but if -- if you need me to zoom in or, umm, if 10:24  
2 there's problems with seeing something, please let me 10:24  
3 know. 10:24

4 Okay. And just so you know, there -- 10:24  
5 there's a number in the lower right-hand corner, which 10:24  
6 is almost all of your last name. We forgot the "e" at 10:24  
7 the end. I apologize for that. Umm. But these are the 10:24  
8 documents we received from you, umm, what I believe you 10:24  
9 referred to as the "Kelley file," and we've now marked 10:24  
10 those with a number, so we can refer to them by that 10:24  
11 number, umm, during the deposition today. So if I say 10:24  
12 "Marlowe 1," then I'd be referring to -- to this page. 10:24

13 Umm. In looking at this first page of 10:24  
14 the document, is this a document you've seen before? 10:24

15 A. Yes. 10:25

16 Q. Okay. Now, I'm just going to scroll to the 10:25  
17 remainder of -- of this document. 10:25

18 MR. FURMAN: And for the record, this 10:25  
19 will be Exhibit 1. We'll be marking the -- the file 10:25  
20 provided to us by Ms. Marlowe as Exhibit 1. So that's 10:25  
21 the 47-page document received in response to the 10:25  
22 subpoena. 10:25

23 (Exhibit 1 designated. 10:25

24 Q. (BY MR. FURMAN) There we go. Is this the 10:25  
25 second page in front of you? 10:25



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1	A. Yes.	10:25
2	Q. Page 3?	10:25
3	A. Yes.	10:25
4	Q. Page 4, the instructions?	10:25
5	A. Yes.	10:25
6	Q. And Page 5?	10:25
7	A. Yes.	10:26
8	Q. Does all that look familiar to you?	10:26
9	A. Yes.	10:26
10	Q. Thank you.	10:26
11	(Document taken off screen.)	10:26
12	Q. (BY MR. FURMAN) Thanks.	10:26
13	And what did you do when you received	10:26
14	that document?	10:26
15	(Witness made distinctive sound.)	10:26
16	A. Contacted my lawyer [laughed].	10:26
17	Q. (BY MR. FURMAN) [Laughed]. And that lawyer,	10:26
18	that's Mr. Myers?	10:26
19	A. Yes.	10:26
20	Q. Thank you.	10:26
21	And, umm, did you ultimately search for	10:26
22	documents?	10:26
23	A. Yes.	10:26
24	Q. And where did you search for documents?	10:26
25	A. In my office.	10:26

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1 Q. Okay. And when you say your office, what do  
2 you mean by that?

3 A. Umm. I have an office that I rent in  
4 New Braunfels Counseling Center.

5 Q. Okay. And that's the office that you searched  
6 for records in response to the subpoena?

7 A. Yes.

8 Q. So you keep -- you keep your client files in  
9 that particular office?

10 A. Yes.

11 Q. And did you keep any client files for -- for  
12 New Braunfels Counseling clients, do you keep them  
13 elsewhere, any files?

14 A. No.

15 Q. Do you keep any electronic files for your  
16 clients?

17 A. No.

18 Q. And the document you provided to us, that was  
19 the complete file for -- for Mr. Kelley?

20 A. Yes.

21 Q. And did you -- or -- Well, did you take any  
22 notes regarding your sessions with Mr. Kelley that were  
23 not in the client file?

24 A. No.

25 Q. And were there any documents for Mr. Kelley

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1 that, umm, might have been lost or destroyed for -- you  
2 know, due to lapse of time or otherwise removed from the  
3 file?

10:28

10:28

10:28

4 A. No.

10:28

5 Q. All right. And I appreciate your time in  
6 assembling those documents as well.

10:29

10:29

7 At this time I'd like to get a little bit  
8 into your background. Umm.

10:29

10:29

9 If you could say your, umm -- What's your  
10 highest level of education?

10:29

10:29

11 A. I have a master's degree.

10:29

12 Q. In what area of study?

10:29

13 A. Psychology.

10:29

14 Q. I have a master's in psychology as well.

10:29

15 Umm. Any other training?

10:29

16 A. No. Just psychology [laughed].

10:29

17 Q. [Laughed]. Well, that's a good field of  
18 study, so I can understand that. Umm.

10:29

10:29

19 And your professional title, that's a  
20 Licensed Professional Counselor?

10:29

10:29

21 A. Yes.

10:29

22 Q. And what does that mean?

10:29

23 A. It means that I'm licensed by the state to  
24 counsel.

10:29

10:30

25 Q. And what did you have to do to obtain that

10:30

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1 license?

10:30

2 A. Umm. I got my master's degree; and then I did

10:30

3 a certain number of hours supervised by an LPC

10:30

4 supervisor; and then I took a licenser exam.

10:30

5 Q. And was that a written exam?

10:30

6 A. Yes. No. It was electronic. I'm sorry.

10:30

7 Q. Oh. I'm behind the times. I apologize.

10:30

8 Okay. And do you have any sort of --

10:30

9 I -- I don't know how this works for, umm, Licensed

10:30

10 Professional Counselors, but do you have any, like,

10:30

11 equivalent of like a board certification or

10:30

12 specialization within counseling?

10:31

13 A. No.

10:31

14 Q. And -- And are you required to, umm, meet any

10:31

15 requirements to keep that license?

10:31

16 A. Yes. Every two years you renew your license.

10:31

17 You have to do 24 CEUs, continuing edu -- education

10:31

18 credits.

10:31

19 Q. Okay. Anything else?

10:31

20 A. No.

10:31

21 Q. Okay.

10:31

22 A. Well, you pay money [laughed].

10:31

23 Q. I -- I'm sorry. I didn't catch that.

10:31

24 A. I said you -- you pay money for it. Other

10:31

25 than that --

10:31

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1 Q. I -- Of course [laughed]. Of course. It goes

10:31

2 for lawyers as well.

10:31

3 Umm. Are you a member of any

10:31

4 professional organizations?

10:31

5 A. No.

10:31

6 Q. And how long have you been a Licensed

10:32

7 Professional Counselor?

10:32

8 A. For six years.

10:32

9 Q. Six years. So roughly 2014?

10:32

10 A. Yeah.

10:32

11 Q. I'm sorry. What year did you get your

10:32

12 master's degree?

10:32

13 A. I graduated December 2011.

10:32

14 Q. And the time period between your master's and,

10:32

15 umm, getting your license, was that time spent in

10:32

16 accumulating hours to obtain that license?

10:32

17 A. Yeah, as a licensed professional intern,

10:32

18 you -- yeah, I was supervised, and it takes that long to

10:32

19 accumulate the hours for it.

10:32

20 Q. Understood.

10:32

21 And, Ms. Marlowe, are you currently

10:32

22 employed?

10:33

23 A. Yes.

10:33

24 Q. Where do you work currently?

10:33

25 A. I have a contract with New Braunfels

10:33

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1 Counseling Center. It's a private practice.

10:33

2 Q. Anywhere else?

10:33

3 A. No.

10:33

4 Q. And when you say you have a contract, could  
5 you explain that a little more?

10:33

10:33

6 A. Umm. The owner of the business has slots for  
7 contracts, people to come in; and basically you're just  
8 renting a room and you pay her a certain amount of --  
9 amount of money to be there for X amount of years.

10:33

10:33

10:33

10:33

10 Q. Okay. And other than renting you the room,  
11 does New Braunfels Counseling provide any other services  
12 for you?

10:33

10:33

10:33

13 A. They run the billing and make appointments and  
14 keyed up -- keep up with our insurances.

10:33

10:34

15 Q. So some of the administrative-type functions?

10:34

16 A. Yes.

10:34

17 Q. Okay. Anything else they do?

10:34

18 A. No [laughed].

10:34

19 Q. And other than sharing the same office space,  
20 do you have any sort of affiliation or relationship with  
21 the other professionals who work out of that office?

10:34

10:34

10:34

22 A. No.

10:34

23 Q. And -- And do you know what kind of services  
24 are provided, New -- New Braunfels Counseling? Is it  
25 just counseling or do --

10:34

10:34

10:34

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1 Q. That makes sense. 11:03

2 Do you know why Mr. Kelley was assigned 11:03

3 to you in particular? 11:03

4 A. No. 11:03

5 Q. I'm scrolling again, and this is Marlowe 21. 11:03

6 It looks to be a copy of Mr. Kelley's driver's license. 11:03

7 Umm. Looking at the photo, is this what Mr. Kelley 11:03

8 looked like around the time that you saw him? 11:03

9 A. No. 11:03

10 Q. How did he look different? 11:03

11 A. Umm. His hair was shorter and he didn't have 11:03

12 facial hair. 11:04

13 Q. And do you know why he had a Colorado driver's 11:04

14 license? 11:04

15 A. He lived in Colorado. 11:04

16 Q. And do you know when he came back to Texas 11:04

17 from Colorado? 11:04

18 A. I don't recall. 11:04

19 Q. Understood. 11:04

20 I'm going to jump to the last page here. 11:04

21 A. Oh. Whoops. 11:04

22 Q. I'm on Marlowe 47. It says "New Braunfels 11:04

23 Counseling Center, Initial Assessment." Do you see 11:04

24 that? 11:04

25 A. Yes. 11:04

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1 Q. Okay. And what is this form?

11:04

2 A. This is the form we utilize with every new

11:04

3 patient to just do the diagnosis. It's just getting a

11:05

4 gist of what the whole picture looks like of the person.

11:05

5 Q. And that's the first time you meet with a

11:05

6 client?

11:05

7 A. Yes. It's the initial assessment.

11:05

8 Q. Umm. Okay. And -- And what are your goals

11:05

9 during that first meeting?

11:05

10 A. To assess how treatment will be and if it's a

11:05

11 fit for them to stay with me.

11:05

12 Q. And how long is the initial appointment

11:05

13 typically?

11:05

14 A. Just an hour.

11:05

15 Q. Do you recall if it was any longer or shorter

11:05

16 for Mr. Kelley's first appointment?

11:05

17 A. Umm. I don't recall.

11:05

18 Q. And on this form, is that your handwriting?

11:06

19 A. Yes [laughed].

11:06

20 Q. And is that your signature at the bottom?

11:06

21 A. Yes.

11:06

22 Q. And the date in the upper right-hand corner of

11:06

23 June 6th, 2016, does that sound right?

11:06

24 A. Yes.

11:06

25 Q. And on this form there are various categories.

11:06



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1 It says "Presenting Problem," "Symptoms," "Diagnosis." 11:06

2 And are these the categories of questions you would ask 11:06

3 a client during the first meeting? 11:06

4 A. Yes. 11:06

5 Q. You did you have any -- any sort of standard 11:06

6 structure or format for asking these questions? 11:07

7 A. No. 11:07

8 Q. All right. Now looking at the form, it says 11:07

9 ref -- "Referred From: Google." So it sounds like he 11:07

10 just -- he found New Braunfels Counseling online. Is 11:07

11 that your understanding? 11:07

12 A. Yes. 11:07

13 Q. And under "Presenting Problem," umm, it says, 11:07

14 "just need to talk." Umm. Is that something clients 11:07

15 commonly put in the area? 11:07

16 A. Sometimes. 11:07

17 MS. GREEN: Commonly what? 11:07

18 MR. MYERS: "Put." 11:07

19 MS. GREEN: "Put." 11:07

20 Q. (BY MR. FURMAN) And during that first meeting, 11:08

21 did he provide any detail about what he wanted to talk 11:08

22 about? 11:08

23 A. I don't recall. 11:08

24 Q. At a later time did you come to realize or 11:08

25 understand why you thought Mr. Kelley was in treatment 11:08

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1 with you?

11:08

2 A. The more we talked, it was predominantly

11:08

3 stress management about finances.

11:08

4 Q. So stress management of finances was the

11:08

5 primary issue?

11:08

6 A. Yeah.

11:08

7 Q. And any other significant issues that he

11:08

8 brought up during the sessions?

11:08

9 A. Those were mainly it.

11:09

10 Q. All right. And do you find in your practice

11:09

11 that sometimes clients are not candid or forthcoming

11:09

12 about the reason they're seeking treatment?

11:09

13 A. Sometimes.

11:09

14 Q. And did you find that to be the case with

11:09

15 Mr. Kelley?

11:09

16 A. No.

11:09

17 Q. Okay. Umm. So just very generally, when you

11:09

18 first met Mr. Kelley, what was your impression of him?

11:09

19 A. He was very quiet and a little bit guarded,

11:09

20 nervous.

11:09

21 Q. Anything that -- else that sticks out to you

11:10

22 from that first appointment as we stand here today?

11:10

23 A. No, that's mainly it. He was just very

11:10

24 guarded, very hesitant.

11:10

25 Q. Did that change during the course of therapy?

11:10

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1 A. Slowly he became less guarded.

11:10

2 Q. Did he become less quiet, I guess, more

11:10

3 talkative?

11:10

4 A. A little bit at times.

11:10

5 Q. What about nervous? Did he seem less nervous

11:10

6 later on?

11:10

7 A. That was pretty consistent [laughed].

11:10

8 Q. Did you have an understanding of why he was so

11:11

9 nervous?

11:11

10 A. No.

11:11

11 Q. And at this point in time was there any --

11:11

12 ever any reason to believe that mister -- Did Mr. Kelley

11:11

13 in any way seem any -- any different than a typical

11:11

14 client that might walk into your office?

11:11

15 A. No.

11:11

16 Q. And during any -- any of the time -- During

11:11

17 any of the times that you treated Mr. Kelley, did he

11:11

18 ever seem like anyone other than a typical client that

11:11

19 you would treat in your office?

11:12

20 A. No.

11:12

21 Q. I'm looking at -- I'm going to jump down right

11:12

22 now and go to "Medical History," and it says there, it

11:12

23 looks like, "Acid Reflux." And during this first

11:12

24 meeting, did he bring any other medical problems to your

11:12

25 attention?

11:12

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1 A. No. 11:12

2 Q. And did he bring any medical problems to your 11:12  
3 attention at any time during the course of -- of 11:12  
4 therapy? 11:12

5 A. Not that I can recall. 11:12

6 Q. Did he ever mention anything about having 11:12  
7 chronic pain in his neck? 11:13

8 A. No. 11:13

9 Q. Did he ever mention a motorcycle accident 11:13  
10 where he had gotten injured? 11:13

11 A. No. 11:13

12 Q. And at this first meeting do you recall if 11:13  
13 Mr. Kelley told you that he was taking any medications? 11:13

14 A. At that time he said he had antipsychotics 11:13  
15 from the Air Force at one point. 11:13

16 Q. And -- But that was -- that was in the past -- 11:13

17 A. Right. 11:13

18 Q. -- when -- 11:13

19 A. That was in the past, and he currently wasn't 11:13  
20 on anything. 11:13

21 Q. And other than the history of antipsychotics 11:14  
22 with the Air Force, did he mention any other medications 11:14  
23 he had been prescribed at any time? 11:14

24 A. Not at that time. 11:14

25 Q. And did he at a later time? 11:14

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1 A. Later times he shared that he had tried, umm,  
2 Xanax and Klonopin for anxiety.

3 Q. And other than the Xanax, Klonopin, and the  
4 antipsychotics, did he mention any other medicines he  
5 had taken --

6 A. No.

7 Q. -- umm, to you at any time?

8 A. No.

9 Q. With regard to the history of antipsychotics,  
10 did he tell you which medications he had been prescribed  
11 specifically?

12 A. No, he did not specify.

13 Q. And did he say who prescribed them to him?

14 A. No, not specifically; just that it was during  
15 the time in the Air Force.

16 Q. Okay. With respect to the Xanax and Klonopin,  
17 did he ever tell you who had prescribed those  
18 medications for him?

19 A. No.

20 Q. At the time you were treating him, did  
21 Mr. Kelley have a primary doctor?

22 A. I don't recall. I want to say no, but I don't  
23 recall.

24 Q. Understood.

25 Do you recall at any time during the

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1 treatment of Mr. Kelley him providing you with any names 11:16  
2 of medical providers he had seen over the years? 11:16

3 A. No. 11:16

4 Q. And did he ever... Sorry. 11:16

5 Re -- Returning to the history of 11:16  
6 antipsychotics, did he tell you why he had been 11:16  
7 prescribed that type of medi -- medicine? 11:16

8 A. No. 11:16

9 Q. At that first meeting did he describe any 11:16  
10 behavior that he believed to be consistent with 11:16  
11 psychosis? 11:16

12 A. No. 11:16

13 Q. Given the lack of history of psychosis but the 11:17  
14 prescription of antipsychotic medicine, is that 11:17  
15 something that concerned you? 11:17

16 A. No. 11:17

17 Q. And why is that? 11:17

18 A. Well, I mean, he was under somebody else's 11:17  
19 treatment, and he wasn't very forthcoming with that 11:17  
20 whole time period, so -- and then it was in the past, so 11:17  
21 it didn't pertain to the now. 11:17

22 Q. Understandable. 11:17

23 So you felt -- and correct me if I'm 11:17  
24 wrong, but you felt that he might have not been 11:17  
25 providing all of the details of his medication history? 11:17

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1 Would that be fair?

11:18

2 A. Yes. He was pretty guarded.

11:18

3 Q. And just generally did you have reason to

11:18

4 question whether he was providing you accurate

11:18

5 information with respect to other areas of questioning

11:18

6 as well?

11:18

7 A. Well, I mean, honestly, you never really know

11:18

8 if people are being honest with what they're saying.

11:18

9 You've just got to kind of roll with it.

11:18

10 Q. So you weren't attempting to, I guess, verify

11:18

11 at that first meeting whether his history was a hundred

11:18

12 percent complete; is that right?

11:18

13 A. That's what we did later on as you develop the

11:18

14 relationship.

11:18

15 Q. Understood.

11:18

16 So you felt building a rapport with

11:19

17 Mr. Kelley was -- was paramount during that first

11:19

18 meeting as well as getting important data and that

11:19

19 details could be filled in later? Is that fair?

11:19

20 A. Yes.

11:19

21 Q. And just so the record is clear, you -- you

11:19

22 have never prescribed medicine to anyone; correct?

11:19

23 A. Correct.

11:19

24 Q. Looking under "Substance Abuse History" --

11:19

25 A. Yeah.

11:19

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1 Q. -- if I'm reading it correctly, it says,

11:19

2 "smokes weed every day; alcohol," and -- and did I read

11:19

3 that right?

11:20

4 A. Yes [laughed].

11:20

5 Q. Okay. Umm. So it sounds like he was saying

11:20

6 he was using marijuana every day; is that right?

11:20

7 A. Yes.

11:20

8 Q. Was that concerning to you at the time?

11:20

9 A. No.

11:20

10 Q. And why is that?

11:20

11 A. Sometimes people will utilize marijuana to

11:20

12 self-medicate for anxiety, and it just didn't seem like

11:20

13 an extreme thing at the time.

11:20

14 Q. Understood.

11:20

15 Did Mr. Kelley tell you why he used

11:20

16 marijuana every day?

11:20

17 A. I don't recall.

11:20

18 Q. Did you have a belief at the time as to why he

11:21

19 was regularly using marijuana?

11:21

20 A. Not at the time, not at the initial session.

11:21

21 Q. Did you later just develop a belief as to why

11:21

22 he was using it?

11:21

23 A. Yes. I developed the belief that he was

11:21

24 self-medicating for -- to sleep and to manage the

11:21

25 anxiety, to calm down.

11:21



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1 Q. So in his context you -- you saw the use of

11:21

2 marijuana as primarily therapeutic? Is that fair?

11:21

3 A. Yes.

11:21

4 Q. Was the use of marijuana causing any problems

11:21

5 in his life?

11:21

6 A. Not that I can recall.

11:21

7 Q. In reference to alcohol, do you remember what

11:22

8 he said about -- about that?

11:22

9 A. Just that he would drink at times.

11:22

10 Q. Do you recall how much he would say he would

11:22

11 typically drink?

11:22

12 A. No, I don't.

11:22

13 Q. Sitting here today do you recall if his

11:22

14 recounting of alcohol use was more consistent with

11:22

15 social drinking rather than binge drinking?

11:22

16 A. It definitely wasn't social. I -- Well, he

11:22

17 drank by himself.

11:22

18 Q. And do you know if he drank to -- to get drunk

11:23

19 or to get a high?

11:23

20 A. To get drunk.

11:23

21 Q. And at the time did you see it as particularly

11:23

22 problematic?

11:23

23 A. No, because it wasn't excessive every day from

11:23

24 what I was informed.

11:23

25 Q. Understood.

11:23

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1 And during the time that you saw

11:23

2 Mr. Kelley, did his alcohol -- his self-reported alcohol

11:23

3 use ever change?

11:23

4 A. No.

11:23

5 Q. And during your treatment of Mr. Kelley, did

11:23

6 you ever come to suspect he had a problem with alcohol

11:23

7 abuse?

11:23

8 A. No.

11:23

9 Q. At the time of the first intake session, would

11:24

10 you have also asked about the use of other substances?

11:24

11 A. Yes.

11:24

12 Q. And -- And if Mr. Kelley had reported using

11:24

13 other illegal drugs or substances, would you have

11:24

14 written that down?

11:24

15 A. Yes.

11:24

16 Q. And did you feel at the time he was being

11:24

17 honest about his use of alcohol and -- and substances?

11:24

18 A. Yes, as far as I knew.

11:24

19 Q. Did you ever at any time have reason to doubt

11:24

20 that he was being honest to you about his use of

11:24

21 substances?

11:24

22 A. No.

11:24

23 Q. Were you concerned about any of his

11:24

24 personality traits or characteristics predisposing him

11:25

25 to substance abuse?

11:25

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1 Q. Other than the -- what we talked about, the 11:53  
2 unfairness he felt in the financial treatment of his 11:53  
3 sisters versus him, did he ever talk about any other 11:53  
4 issues or grievances with his sisters? 11:53

5 A. No. 11:53

6 Q. The very last statement under "Social 11:53  
7 History," it says, "History of Air Force." And I think 11:53  
8 you said he -- he talked very little about the 11:53  
9 Air Force? 11:53

10 A. Right. 11:53

11 Q. Well, what little did he tell you? 11:53

12 A. Just that he was in it and he wa -- wasn't in 11:53  
13 it anymore. 11:53

14 Q. Did he ever talk about his discharge or the -- 11:54  
15 the nature of his discharge from the Air Force? 11:54

16 A. No. 11:54

17 Q. Did he ever talk about spending time in prison 11:54  
18 while with the Air Force? 11:54

19 A. No. 11:54

20 Q. And during that first meeting did he talk 11:54  
21 about, umm, having any -- any friends? 11:54

22 A. No. 11:54

23 Q. And did he at a later time? 11:54

24 A. When he came back the one time in '17, he had 11:54  
25 more friends. 11:54

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1 Q. So you said "he had more friends"?

11:54

2 A. Uh-huh.

11:54

3 MR. MYERS: Is that a "yes"?

11:55

4 THE WITNESS: I guess.

11:55

5 MR. MYERS: No. You have to say "yes."

11:55

6 You said --

11:55

7 THE WITNESS: Yes.

11:55

8 MR. FURMAN: -- "Uh-huh."

11:55

9 THE WITNESS: I'm sorry [laughed].

11:55

10 MR. FURMAN: [Laughed]. Thank you.

11:55

11 Q. (BY MR. FURMAN) Do you know if he had any

11:55

12 friends during this time of the first meeting?

11:55

13 A. Not that I was informed of, no.

11:55

14 Q. And -- And up until that last meeting in 2017,

11:55

15 and any -- any time before then, did he inform you of

11:55

16 having any -- any friends?

11:55

17 A. No.

11:55

18 Q. Was that concerning to you at all?

11:55

19 A. Yes, but it made sense because he was guarded.

11:55

20 Q. I -- Other than him being guarded, do you have

11:55

21 any -- any other reason to believe that he might have

11:55

22 had issues making friends?

11:56

23 A. Because he was bullied and he had anxiety.

11:56

24 Those people are less likely to trust other people to be

11:56

25 friends with because they don't want to get hurt again.

11:56

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1 Q. That's understandable.

11:56

2 Any other reason with Mr. Kelley you

11:56

3 thought he might have had issues making friends?

11:56

4 A. No.

11:56

5 Q. And just generally with respect to this form

11:56

6 here, umm, all the information on here is provided by

11:56

7 the -- I guess -- well, except for a diagnosis, but this

11:56

8 is based off just the interview with the client?

11:57

9 A. Yes.

11:57

10 Q. In Mr. Kelley's case did you review any

11:57

11 medical records or consult with anyone, umm, in

11:57

12 formulating his diagnosis or treatment?

11:57

13 A. No.

11:57

14 Q. Is that something you would typically do?

11:57

15 A. No.

11:57

16 Q. Okay. I'd like to look at, on the same form,

11:57

17 under "Symptoms," and -- and just -- just so I'm clear,

11:57

18 are these symptoms that the patient's reporting or

11:57

19 things you're observing or both or what is this

11:57

20 referring to?

11:57

21 A. Kind of those key words that he would say. So

11:57

22 it's -- it's not -- It's things he said.

11:57

23 Q. Okay. And -- And it says, "sleeps poorly."

11:58

24 Do you recall what he said about his sleep?

11:58

25 A. No, I don't recall.

11:58

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1 Q. Do you recall from later sessions some of the  
2 sleeping difficulties he might have described to you?

3 A. No.

4 Q. What about nightmares? Do you recall anything  
5 about that?

6 A. No, I believe that was not mentioned again.

7 Q. And during that first meeting did he provide  
8 any details on the nightmares?

9 A. No.

10 Q. Next you have, "paranoid." Is -- And so this  
11 is something he's reporting to you?

12 A. Yes.

13 Q. He -- He's saying he's paranoid?

14 A. Yes.

15 Q. So, yes?

16 A. Yes.

17 Q. Okay. Is that something a person who's  
18 paranoid would typically say?

19 A. Sometimes.

20 Q. What about in your experience?

21 A. Sometimes.

22 Q. And was his -- His being paranoid or reporting  
23 himself to be paranoid, was that consistent with your  
24 impression of him?

25 A. It correlated to the anxiety, yes.

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1 Q. Did he provide any examples of being paranoid

11:59

2 in that first session?

11:59

3 A. No.

11:59

4 Q. What about at a later time?

11:59

5 A. I don't recall.

12:00

6 Q. Did he exhibit any characteristics consistent

12:00

7 with someone who was paranoid when you saw him in

12:00

8 session?

12:00

9 A. Yes.

12:00

10 Q. What were some of those?

12:00

11 A. The being guarded and kind of passive with his

12:00

12 words, hesitant.

12:00

13 Q. When you say "passive with his words," what do

12:00

14 you mean by that?

12:00

15 A. Kind of gauging who I was and getting a feel

12:00

16 for if he could talk to me, so kind of saying a little

12:00

17 bit of something and seeing how I would react to it.

12:01

18 Q. Did it sound like he was reticent to speak his

12:01

19 mind?

12:01

20 A. Yeah. Yes.

12:01

21 Q. And is paranoia something in a client you'd be

12:01

22 concerned about?

12:01

23 A. It depends on how severe it is.

12:01

24 Q. How severe do you think Mr. Kelley's was at

12:01

25 this time?

12:01

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1 A. Not something alarming.

12:01

2 Q. So his level of paranoia wasn't something that  
3 was alarming to you?

12:01

12:01

4 A. Not at the time, no.

12:01

5 MR. SCHREIBER: Objection. Asked and  
6 answered.

12:01

12:01

7 Q. (BY MR. FURMAN) At any time did his paranoia  
8 become alarming to you?

12:01

12:02

9 A. When he found out his wife cheated on him.

12:02

10 Q. And that's during a later session?

12:02

11 A. Yes.

12:02

12 Q. Okay. I -- I have a -- treatment notes here.

12:02

13 We can talk about that a little bit more, umm, when we  
14 get there, if that's okay.

12:02

12:02

15 When he presented to you this first time,  
16 did he want to work with you on being less paranoid?

12:02

12:02

17 A. No.

12:02

18 Q. Was it something you were trying to treat?

12:02

19 A. No.

12:02

20 Q. Can paranoia be consistent with a more -- or  
21 with a severe psychiatric diagnosis?

12:02

12:02

22 A. Potentially.

12:02

23 Q. And did you have any concerns here that his  
24 level of paranoia was consistent with a more severe

12:03

12:03

25 psychiatric diagnosis?

12:03



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1 A. No.

12:03

2 Q. And just to make sure I'm clear, when I --

12:03

3 when I said "severe psychiatric diagnosis," what does

12:03

4 that mean to you?

12:03

5 A. Like schizophrenia or something along those

12:03

6 lines.

12:03

7 Q. But you were more -- You were -- were not

12:03

8 worried about his paranoia being, like I said, a

12:03

9 psychotic level at this time?

12:03

10 A. Correct.

12:03

11 Q. Did you ever have concerns that his paranoia

12:03

12 reached a psychotic level?

12:03

13 A. No.

12:03

14 Q. Next under "Symptoms" you -- you wrote,

12:04

15 "stressed." Do you recall what he was stressed about?

12:04

16 A. Finances.

12:04

17 Q. Isn't everyone [laughed]?

12:04

18 A. [Laughed].

12:04

19 MR. SCHREIBER: Objection.

12:04

20 Q. (BY MR. FURMAN) A --

12:04

21 MR. SCHREIBER: Sidebar.

12:04

22 Q. (BY MR. FURMAN) And do you recall or do you

12:04

23 recount any other stressors at this time?

12:04

24 A. That was predominantly his stressor; so, no.

12:04

25 Q. And what particularly was his financial

12:04

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1 A. No [laughed]. 12:08

2 Q. Did you tell him that? 12:08

3 A. Yes. 12:08

4 Q. Was he receptive of that? 12:08

5 A. No. 12:08

6 Q. [Laughed]. 12:08

7 A. [Laughed]. 12:08

8 Q. I understand. 12:08

9 Next on the "Symptoms" list, you have, 12:08

10 "numb." Umm. What is that referring to? 12:08

11 A. He said sometimes he felt numb. 12:08

12 Q. And what kind of, I guess, mental health 12:08

13 issues or psychotic diagnoses can that be consistent 12:08

14 with? 12:08

15 A. Depression. Depression can make somebody feel 12:08

16 empty. 12:08

17 Q. Anything else? 12:09

18 A. No, that's predominantly where we went with 12:09

19 that, was it was just a very sad, empty place, numb. 12:09

20 Q. So in Mr. Kelley's circumstances, you felt the 12:09

21 numbness was related to his being depressed? Is that 12:09

22 fair? 12:09

23 A. Yes. 12:09

24 Q. Were you ever concerned that the numbness was 12:09

25 a sign of a more significant mental health issue like 12:09

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1 psychosis or disassociation?

12:09

2 A. No.

12:09

3 Q. And then the next sentence, "depressed," so

12:09

4 we've -- we kind of got into that. Other than being

12:09

5 numb, what else made you -- or what else he said was

12:09

6 consistent with depression?

12:10

7 A. He said he was depressed.

12:10

8 Q. Was that consistent with your observation?

12:10

9 A. Yes.

12:10

10 Q. What did you observe with him that was

12:10

11 indicative of depression?

12:10

12 A. Just the -- the thing -- the culmination of

12:10

13 the things he was saying sounded like a depressed person

12:10

14 based off of the diagnostic manual.

12:10

15 Q. When we refer to "diagnostic manual," is that

12:10

16 the -- the DSM?

12:10

17 A. Yes.

12:10

18 Q. Did he talk about ever being on any medication

12:10

19 to treat depression?

12:10

20 A. No. He had only talked about the

12:10

21 antipsychotics and then later the anxiety medicines.

12:10

22 Q. Did you feel that antidepressant medication

12:11

23 might have been helpful in his case?

12:11

24 A. You know, we never talked about it.

12:11

25 Q. That -- That's fair.

12:11

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1 And earlier we talked about the -- the

12:11

2 use of marijuana. Umm. At this time was he doing

12:11

3 anything else to treat his depression?

12:11

4 A. No.

12:11

5 Q. And did you have any sense at this time as to

12:11

6 what was causing his [indiscernible]?

12:11

7 MS. GREEN: His what? Causing his what?

12:12

8 MR. FURMAN: Sorry.

12:12

9 Q. (BY MR. FURMAN) Causing his depression?

12:12

10 A. Umm. No. I mean, probably -- No, not at the

12:12

11 time. It was -- It was very much an initial session.

12:12

12 Q. Understood.

12:12

13 But what about later? Did you later have

12:12

14 a sense of what had been -- might have been causing his

12:12

15 depression?

12:12

16 A. His stress; the pressure he put on himself.

12:12

17 Q. Anything else?

12:12

18 A. That's what I gathered. No, not anything

12:12

19 else.

12:12

20 Q. Thank you.

12:12

21 And -- And, lastly, you have, "don't

12:12

22 care," in quotes. Does quotes mean this is a statement

12:13

23 he made?

12:13

24 A. Yes.

12:13

25 Q. And to you what was that statement indicative

12:13

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1 of?

12:13

2 A. It correlates to the depressed state and the

12:13

3 numbness. Sometimes people just say they don't care.

12:13

4 Q. So it sounds like he was, I guess, apathetic

12:13

5 during that meeting?

12:13

6 A. Yes.

12:13

7 Q. And other than the symptoms here, do you

12:13

8 recall if he brought to your attention any other

12:13

9 symptoms during that first meeting?

12:13

10 A. No, I don't recall.

12:13

11 Q. And if other symptoms were important, would

12:14

12 you have written them down?

12:14

13 A. Absolutely.

12:14

14 Q. And during the course of Mr. Kelley's

12:14

15 treatment were there other -- were there significant

12:14

16 symptoms -- new significant symptoms that came about?

12:14

17 A. No; just more -- more of what was already

12:14

18 there, more of the anxiety, the stress.

12:14

19 Q. So the latest symptoms were just consistent

12:14

20 with a different level of the symptoms described here?

12:14

21 Is that fair?

12:14

22 A. Yes.

12:14

23 Q. I'm going down to -- more towards the bottom

12:14

24 of the page, where it says "Danger to Self/Others." Do

12:14

25 you see that?

12:15

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1 A. Yeah.

12:15

2 Q. And it says, "Passive. SI." What does that  
3 mean?

12:15

12:15

4 A. Suicidal ideations.

12:15

5 Q. And could you just ec -- Could you explain  
6 what "passive" sudis -- "suicidal ideation" is?

12:15

12:15

7 A. That is sometimes the person thinks of wanting  
8 to die or kill themselves or just not be here, but they  
9 don't have a plan or intent.

12:15

12:15

12:15

10 Q. Thank you.

12:15

11 Do you recall any examples that he gave  
12 during that first session of passive suicidal ideation?

12:15

12:15

13 A. No.

12:15

14 Q. Was that something that was concerning to you?

12:15

15 A. Not at the time because it correlates with  
16 depression and there was no intent or plan.

12:15

12:15

17 Q. So to determine whether someone is suicidal in  
18 addition to ideation, you looked at -- you -- you  
19 typically look at intent and plan as well; is that  
20 right?

12:16

12:16

12:16

12:16

21 A. Intent, plan, or history, yes, that's right.

12:16

22 Q. Did he disclose any history of suicidal  
23 attempts or suicidal ideation in the past?

12:16

12:16

24 A. No. I would have written it down.

12:16

25 Q. In other times did -- during your treatment of

12:16

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1 him, did he ever express passive suicidal ideation?

12:16

2 A. I don't recall.

12:16

3 Q. And do you recall if his suicidality behaviors  
4 ever increased to include intent and/or plan?

12:16

12:16

5 A. No.

12:17

6 Q. So, no -- no, they did not?

12:17

7 A. No, they did not. They did not increase that  
8 I was aware of.

12:17

12:17

9 Q. Thank you.

12:17

10 So is it fair that at the time of this  
11 appointment, you had no reason to believe he was going  
12 to hurt himself?

12:17

12:17

12:17

13 A. Correct.

12:17

14 Q. And at this appointment did you have any  
15 reason to believe that he would hurt anyone else?

12:17

12:17

16 A. No.

12:17

17 Q. At any time during the course of your  
18 treatment with Mr. Kelley, did you have reason to  
19 believe that he would hurt someone else?

12:17

12:17

12:17

20 A. No.

12:17

21 Q. Was Mr. Kelley someone you considered in any  
22 regard a risk for violence during your treatment of him?

12:17

12:17

23 A. No.

12:17

24 Q. Given the potential of certain persons with  
25 mental health issues to harm themselves or others, umm,

12:18

12:18

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1 do you routinely ask clients if they have weapons or  
2 firearms in the home?

3 A. No.

4 Q. Is that something you ever ask of clients?

5 A. If they have expressed that they have intent  
6 or a plan, then that's the next question, but not  
7 otherwise.

8 Q. And with Mr. Kelley, did you ever ask him if  
9 he had firearms in the home?

10 A. No.

11 Q. Did you ever ask him if he had access to  
12 firearms?

13 A. I didn't have to because in the first session,  
14 he mentioned he liked hunting hogs and deer, so I  
15 assumed he had hunting stuff for that.

16 Q. [Laughed]. That's a fair point. I guess...

17 So when he was referring to hunting hogs  
18 and deer, umm, I guess he wasn't hunting with a bow and  
19 arrow; is that right?

20 A. Correct. I guess I just assumed it was a gun.  
21 I don't know anything about hunting.

22 Q. When he described the hunting, did he describe  
23 any specifics of -- of the firearms, what type or whose  
24 they were, any of those details?

25 A. No.



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1 MR. SCHREIBER: Objection. Assumes facts 12:19  
2 not in evidence. 12:19

3 A. No. 12:19

4 Q. (BY MR. FURMAN) And before we get to that 12:19

5 first treatment, I just want to, umm, focus on the -- 12:20

6 the diagnosis you gave Mr. Kelley, umm, in this form. 12:20

7 And -- And just for background information is this five 12:20

8 axes here. So what are those five axes related to? 12:20

9 A. Umm. It's a different part of the diagnosis 12:20

10 to kind of break down where is the person at. Like 12:20

11 Axis I is the main diagnosis. Axen -- Axis II is for 12:20

12 personality diagnoses. Axis III is for medical issues 12:20

13 or -- how do you say -- diagnoses. Axis IV are the 12:20

14 stressors or the -- kind of the heavy hitters of why 12:20

15 they would be in therapy, like the things that are 12:20

16 wrong. And Axis V is the severity of the issue or the 12:20

17 diagnosis. 12:21

18 Q. That's helpful. Thank you. 12:21

19 Under Axis V, it says "Current" and "GAF" 12:21

20 50." I guess, first, what is "GAF"? 12:21

21 A. Oh, my goodness [laughed]. 12:21

22 Q. [Laughed]. 12:21

23 A. I don't remember what it -- It's something 12:21

24 functioning. 12:21

25 Q. Oh, if you don't remember what it -- what 12:21

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1 it -- What does it generally mean? What does it entail?

12:21

2 What -- What does the number "50" mean?

12:21

3 A. It's the severity of how it's affecting them.

12:21

4 Like, "50" means it's pretty moderate. But it's -- The

12:21

5 higher you go, the healthier the individual. The lower

12:21

6 you go, the more the severe the issue.

12:21

7 Q. That's what I needed. Thank you.

12:21

8 So when you're saying "50," you said that

12:21

9 was moderate severity of his symptoms?

12:21

10 A. Right. Yes.

12:21

11 Q. Thanks.

12:21

12 Looking at Axis II, you say "defer," so

12:22

13 what does "defer" mean?

12:22

14 A. Defer for the -- Well, for Axis III -- I'm not

12:22

15 a medical doctor, so I don't really choose to write

12:22

16 anything there. So I defer to their medical doctor.

12:22

17 And Axis II, I didn't see at the time any kind of

12:22

18 personality disorders, so I deferred to nothing was

12:22

19 there [laughed].

12:22

20 Q. Understood.

12:22

21 Umm. At a later time, umm, did you see

12:22

22 any indications that Mr. Kelley might have behavior

12:22

23 consistent -- or symptoms consistent with a personality

12:22

24 disorder?

12:22

25 A. No.

12:22

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1 Q. Can paranoia be consistent with a personality  
2 disorder?

12:22

12:22

3 A. I think it can be a trait of several  
4 personality disorders, but, you know, they've got  
5 several traits.

12:22

12:22

12:23

6 Q. So you felt like the paranoia alone wasn't  
7 sufficient to diagnose a personality disorder? Is that  
8 fair?

12:23

12:23

12:23

9 A. That's fair.

12:23

10 Q. And at -- at other times with -- with other  
11 clients, have you had the opportunity to diagnose a  
12 personality disorder?

12:23

12:23

12:23

13 A. Yes.

12:23

14 Q. Thank you.

12:23

15 Looking at Axis I, umm, it looks like it  
16 says "F31.9"; is that right?

12:23

12:23

17 A. Yes.

12:23

18 Q. And then it says, it looks like, "Bipolar I."

12:23

19 And then could you read the rest to me? I think it's an  
20 abbreviation. I can't quite make it out.

12:24

12:24

21 A. Sure. "Bipolar 1 disorder, current episode  
22 unspecified."

12:24

12:24

23 Q. And what's that mean in laymen's terms?

12:24

24 A. Umm. That he was definitely in Bipolar I

12:24

25 disorder, but the current experience he was having, the

12:24

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1 current episode, if you will, was -- I couldn't decipher

12:24

2 if it was mixed or if he was manic or if he was

12:24

3 predominantly depressed. Figure that out as a -- at a

12:24

4 later date when you get to know them better.

12:24

5 Q. Understood.

12:24

6 But after that first meeting, you were

12:24

7 convinced he had Bipolar I disorder of some type?

12:24

8 A. Yes.

12:24

9 Q. And what led you to that conclusion?

12:24

10 A. Just the -- the combination between the very

12:24

11 heightened mood and then the very depressive moments

12:25

12 that he would have just fit with the diagno -- the

12:25

13 symptoms [laughed].

12:25

14 Q. Understood.

12:25

15 When you say "heightened mood," could you

12:25

16 explain a little more what you mean by that?

12:25

17 A. Like the anxiety and the paranoia and, umm,

12:25

18 other symptoms I'm guessing I saw at the time.

12:25

19 Q. Sure.

12:25

20 Do you recall seeing any other symptoms

12:25

21 of Mr. Kelley that were indicative of mania?

12:25

22 A. I don't recall at this time.

12:25

23 Q. Okay. And we talked about the depression

12:25

24 already. At any of the time during your treatment of

12:25

25 Mr. Kelley did you revisit that diagnosis or see a

12:26

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1 need -- see a need to revisit it?

12:26

2 A. I don't recall.

12:26

3 Q. Do you recall if you needed to make a

12:26

4 differential diagnosis during this first meeting,

12:26

5 differentiating bipolar from another type of disorder?

12:26

6 A. No.

12:26

7 Q. Is bipolar disorder frequently treated with

12:26

8 medication?

12:27

9 A. Yes, it can be.

12:27

10 Q. And I'm guessing from what we said earlier,

12:27

11 umm, it sounded like he wasn't on any medication for

12:27

12 bipolar at this time; is that right?

12:27

13 A. Correct.

12:27

14 Q. Was that concerning to you at all?

12:27

15 A. Not at the time.

12:27

16 Q. Was it at a later time?

12:27

17 A. No.

12:27

18 Q. And during the visit or any time did

12:27

19 Mr. Kelley relay to you that he had been diagnosed with

12:27

20 bipolar disorder at any time in the past?

12:27

21 A. No.

12:27

22 Q. As part of your caseload overall do you

12:28

23 regularly treat patients with bipolar disorder?

12:28

24 A. Yes.

12:28

25 Q. And can bipolar disorder clients have

12:28

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1 instances where they lose touch with reality or

12:28

2 psychotic breaks?

12:28

3 A. Yes.

12:28

4 Q. I think we covered this. But you never saw

12:28

5 anything like that with Mr. Kelley?

12:28

6 A. No, I did not.

12:28

7 Q. And can bi -- clients with bipolar disorder

12:29

8 sometimes engage in -- in risky behavior?

12:29

9 A. Yes.

12:29

10 Q. At this time did you have any concerns about

12:29

11 Mr. Kelley engaging in risky behavior?

12:29

12 A. No.

12:29

13 Q. Did you at a later time?

12:29

14 A. No.

12:29

15 Q. Now, at any point in time did you have

12:30

16 questions about whether Mr. Kelley needed to be referred

12:30

17 to a medical doctor to treat his bipolar?

12:30

18 A. Umm. If you see later in the notes, I wrote a

12:30

19 letter for him to go to a doctor for anxiety medicines

12:30

20 but not bipolar.

12:30

21 Q. Okay. Thank you for pointing that out. And

12:30

22 we'll get to that in one minute.

12:30

23 THE WITNESS: Oh, my -- my -- Sorry.

12:30

24 (Witness indicating cell phone.

12:30

25 Q. (BY MR. FURMAN) At any time during -- during

12:30

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1 anything else you saw as an obstacle to potentially 12:32  
2 working with and treating Mr. Kelley at this time? 12:32

3 A. No. 12:32

4 Q. Umm. At this appointment or sometime after 12:32  
5 did you develop any sort of treatment plan for 12:32  
6 Mr. Kelley? 12:32

7 A. Not specifically. 12:32

8 Q. Did you work with him to develop treatment 12:32  
9 goals? 12:32

10 A. Yes. 12:32

11 Q. Do you recall what those goals were? 12:32

12 A. To learn coping mechanisms for the stress, 12:32  
13 basically. 12:32

14 Q. Anything else? 12:33

15 A. Not that I can recall. 12:33

16 Q. Thank you. 12:33

17 I think that's all the questions I have 12:33  
18 on -- on that form. Umm. 12:33

19 Before we review the treatment notes, 12:33

20 just -- And if you need to look back on the calendar we 12:33

21 looked at earlier, it's the seventh page of the 12:33

22 documents, umm, what we've marked as Marlowe 7, and -- 12:33

23 But looking at it generally, it looks like, for the most 12:33

24 part, your treatment of Mr. Kelley, so during at least 12:33

25 the summer of 2016, was twice a week? Does that sound 12:33

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1 right?

12:33

2 A. Yes.

12:33

3 Q. Is that typical for your clients?

12:33

4 A. Some.

12:33

5 Q. Is that a number that you decided on with

12:34

6 Mr. Kelley?

12:34

7 A. Yes.

12:34

8 Q. And is that a, umm -- Was the amount of

12:34

9 treatment sessions per week any way indicative of the

12:34

10 level of his problems?

12:34

11 A. No.

12:34

12 Q. But, obviously, you felt that coming in twice

12:34

13 a week could be beneficial to him?

12:34

14 A. Yes.

12:34

15 Q. And for setting appointments did you have a

12:34

16 preset schedule with him or did he just schedule at the

12:35

17 end of every session?

12:35

18 A. I honestly don't recall [laughed].

12:35

19 Q. It's not a problem. I don't -- I don't think

12:35

20 it's the most critical question, so...

12:35

21 And during that first treat -- visit or

12:35

22 at any other time you met with Mr. Kelley, did he

12:35

23 mention having any sort of prior mental health

12:35

24 treatment?

12:35

25 A. No.

12:35



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1 back? 12:39

2 A. Not as far as I knew, no. 12:39

3 Q. Understood. 12:39

4 Now, you might have said this, but I 12:39

5 think you felt like he was making good progress in 12:39

6 therapy during your treatment? 12:39

7 A. Yes. 12:40

8 Q. As a therapist did you ever assign Mr. Kelley 12:40

9 what they call "homework" or assign him work outside of 12:40

10 the session for his treatment? 12:40

11 A. Yes. 12:40

12 Q. Do you recall some examples of that? 12:40

13 A. Oh, golly. No [laughed]. I'm sorry. I don't 12:40

14 recall. 12:40

15 Q. Understood. 12:40

16 Do you recall if Mr. Kelley was dutiful 12:40

17 about doing his homework? 12:40

18 A. Yes. 12:40

19 Q. He was good about doing it? 12:40

20 A. Yes. 12:40

21 Q. Okay. I'd like to go through some of the 12:41

22 treatment notes. Umm. You know, I understand, again, 12:41

23 you might not remember everything, you know, about every 12:41

24 specific question, so I certainly understand that, but, 12:41

25 umm, I'd like to cover a few of them. So I'm going to 12:41

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1 turn first to -- We're going to go chronologically, so  
2 that starts at the end of the documents you gave to us.  
3 So I'm looking at here Marlowe 46, which is the note for  
4 June 6th as well as June 9th. Are you there?

5 A. Yes.

6 Q. Thanks.

7 Again, is this a form that's provided to  
8 you by the counseling center for use in your practice?

9 A. Yes.

10 Q. Are you required to use this form?

11 A. No.

12 Q. And I'd like to just quickly generally talk  
13 about the form before we get into some of the specifics  
14 about what you notated for Mr. Kelley. So, umm, where  
15 it says "MENTAL STATUS," what is that referring to  
16 generally?

17 A. Like if they're orientated to time, place,  
18 themselves, like if they know where they're at and  
19 they're present, if you will.

20 Q. And then it looks like below that there's some  
21 symptoms that a client might present with?

22 A. Yes.

23 Q. And then "THOUGHT CONTENT," what's that  
24 referring to?

25 A. How they process their thoughts, if it's

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1 organized or unorganized, if they're jumping everywhere,

12:42

2 or if it's kind of like this dialogue where it's pretty

12:43

3 clear. And appro -- That's what "Appropriate" is.

12:43

4 Q. Okay. And then "SPEECH," what is that

12:43

5 referring to?

12:43

6 A. Like if they're -- How they're responding to

12:43

7 you, if they can enunciate clearly or if they're holding

12:43

8 back or if they're giving you one-word answers, how

12:43

9 they're talking to you.

12:43

10 Q. Okay. And -- And then "AFFECT," what is

12:43

11 "AFFECT"?

12:43

12 A. Their expressions, like if they're -- how --

12:43

13 how their face is moving, I guess. [Laughed]. If

12:43

14 they're happy, sad, flat; what they're presenting

12:43

15 mood-wise.

12:43

16 Q. Okay. And looking at the notes here, these

12:43

17 are all your handwriting?

12:44

18 A. Yeah.

12:44

19 Q. Are those your signatures --

12:44

20 A. Correct.

12:44

21 Q. -- on those notes?

12:44

22 A. Yes.

12:44

23 Q. And then just as a general practice, how long

12:44

24 after treatment sessions do you complete these notes?

12:44

25 A. Same day.

12:44

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1 Q. So you do it while it's still fresh in your --

12:44

2 in your mind?

12:44

3 A. Yes.

12:44

4 Q. And the level of detail in the notes here,

12:44

5 particularly the "SUMMARY" sec -- section, is that

12:44

6 consistent with the detail you use in other notes --

12:44

7 A. Yes.

12:44

8 Q. -- with other -- with other clients?

12:44

9 A. Yes, absolutely.

12:44

10 Q. And does anyone, insurance or anyone, review

12:45

11 these treatment notes?

12:45

12 A. No.

12:45

13 Q. So these notes are for just your benefit and

12:45

14 potentially for the benefit of any future treater?

12:45

15 A. Yes.

12:45

16 Q. All right. I'm looking at the -- the

12:45

17 June 6th, 2016, note, and I noticed you -- for -- under

12:45

18 "MENTAL STATUS," and -- and you marked certain symptoms,

12:45

19 like "Depressed," it looks like, "Withdrawn," "Fearful,"

12:45

20 "Tense," "Anxious," "Suspicious." Do you see that?

12:45

21 A. Yeah. Yes.

12:46

22 Q. So that means you observed those behaviors

12:46

23 during the session?

12:46

24 A. Yes.

12:46

25 Q. And that's consistent with what we were

12:46

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1 talking about earlier because this was the intake

12:46

2 session; correct?

12:46

3 A. Yes.

12:46

4 Q. It looks like here that the box next to

12:46

5 "Paranoid" was not marked. Do you know why?

12:46

6 A. Because I marked "Suspicious."

12:46

7 Q. So in your mind, putting down two versus one

12:46

8 was redundant?

12:46

9 A. Yes.

12:46

10 Q. Next to "SPEECH," it looks like you marked

12:46

11 "Impaired." Umm. What did you mean by that?

12:46

12 A. The difficulty of him talking and getting it

12:47

13 out.

12:47

14 Q. And did you feel that his impaired speech was

12:47

15 due to his guardedness or was there some other reason?

12:47

16 A. Being guarded and hesitant.

12:47

17 Q. Under "AFFECT," it looks like you marked

12:47

18 Flat/Blunted." What does that mean?

12:47

19 A. Like if you look at someone's face and there's

12:47

20 just no expression, they're just --

12:47

21 (Witness made distinct sound.)

12:47

22 A. No expression.

12:47

23 Q. (BY MR. FURMAN) And that -- that's how he

12:47

24 presented to you?

12:47

25 A. Yes.

12:47

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1 Q. Did he ever smile in session?

12:47

2 A. I don't recall.

12:48

3 Q. Do you know if he ever -- Do you recall if he  
4 ever cried in session or got emotional?

12:48

12:48

5 A. No, I don't recall.

12:48

6 Q. And we talked about several of these topics

12:48

7 already. Umm. I just -- I just want to touch briefly

12:48

8 on the hunting issue. It says -- looks like it says,

12:49

9 "Lives on family ranch," and then, "likes hunting hogs

12:49

10 and deer." Umm. What did -- What did he tell you about  
11 that?

12:49

12:49

12 A. Just simply that is all I can recall him

12:49

13 saying.

12:49

14 Q. And did he do the hunting on his parents'

12:49

15 ranch?

12:49

16 A. Yes.

12:49

17 Q. Did he say the reason he was hunting, just

12:49

18 because he enjoyed it or some other reason?

12:49

19 A. I don't think he specified. I guess I assumed

12:49

20 because he enjoyed it.

12:49

21 Q. Did he ever express to you any enjoyment or

12:50

22 satisfaction in hurting or killing animals?

12:50

23 A. No.

12:50

24 Q. And other than this session, do you recall if

12:50

25 he talked about hunting and -- or using firearms at any

12:50

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1 other point during your treatment of him?

12:50

2 A. No.

12:50

3 Q. Looking at the treatment note at the bottom of

12:50

4 that page, the June 9th treatment note, it looks like

12:50

5 under "MENTAL STATUS," several of the same boxes are

12:51

6 still checked. Do you see that?

12:51

7 A. Yes.

12:51

8 Q. And do you have any specific rec --

12:51

9 recollection of that second appointment?

12:51

10 A. No.

12:51

11 Q. And we've already talked about some of this.

12:51

12 I won't repeat myself too much. But it looks like it

12:51

13 says, "Discussed financial concerns," and then it says,

12:51

14 "stress about working around people." With regards to

12:51

15 "stress about working around people," do you recall

12:52

16 anything he might have said?

12:52

17 A. No, I don't.

12:52

18 Q. And then below that, it looks like it says,

12:52

19 "Shared was in military '09 through '13." Did I read

12:52

20 that right?

12:52

21 A. Yes.

12:52

22 Q. And you said that's to say he -- he told you

12:52

23 about his service in the military and that was between

12:52

24 2009 and 2013? Does that sound right?

12:52

25 A. I hope that's what that means. It either

12:52

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1 means that or September 2013. He got out -- I'm pretty

12:52

2 sure '09 to '13 is what it means, that he served.

12:52

3 Q. And it says, "Discussed family relationship."

12:53

4 Do you recall specifically what was discussed during

12:53

5 that appointment?

12:53

6 A. No, I don't.

12:53

7 Q. In regards to the stress about working around

12:53

8 people, do you ever have a sense of whether Mr. Kelley

12:53

9 had problems or issues dealing with people?

12:53

10 A. Well, yeah, like the history of being bullied

12:53

11 and beat up and mistreated. That's probably why he was

12:53

12 guarded, and that doesn't fare well when you're around

12:53

13 other people.

12:53

14 Q. So you felt that bullying and guardedness were

12:53

15 making it hard for him to interact with others?

12:53

16 A. Yes.

12:53

17 Q. All right. We can turn to the next note

12:54

18 chronologically. So this is Marlowe 45 in notations.

12:54

19 And the -- the two notes, again, the one at the top is

12:54

20 June 14, 2016. Are you there?

12:54

21 A. Yes.

12:54

22 Q. And, again, the "MENTAL STATUS," it looks like

12:54

23 several of the same boxes are still checked from the

12:54

24 prior session. Do you see that?

12:54

25 A. Yes.

12:54



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1 know what that's referring to? 01:05

2 A. No, I don't recall. 01:05

3 Q. Do you recall at any point during your 01:06

4 treatment with him him discussing having memory or 01:06

5 recall issues? 01:06

6 A. I don't remember. [Laughed]. I don't 01:06

7 remember memory issues. 01:06

8 Q. All right. We can go to the next page. So 01:06

9 this is Marlowe 43 on your -- 01:06

10 MR. SCHREIBER: Hold on a second. Do you 01:06

11 mind taking a five-minute break for me? 01:06

12 MR. FURMAN: Yeah, that's fine with me. 01:06

13 MR. SCHREIBER: Thank you. I need to 01:06

14 go -- 01:06

15 MR. FURMAN: Yeah. Off the record. 01:06

16 MS. WILLIS: Off the record at 1:05 p.m. 01:06

17 (Recess. 01:06

18 MS. WILLIS: We're on the record at 01:15

19 1:14 p.m. 01:15

20 MR. FURMAN: Thank you. 01:15

21 Q. (BY MR. FURMAN) Mr. Marl -- Ms. Marlowe, we 01:15

22 went on a break. We had in front of you Marlowe 43, 01:15

23 which at the top says "July 1, 2016," a treatment note. 01:15

24 Are you there? 01:15

25 A. Yes. 01:15

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1 Q. All right. And looking under the summary for  
2 that treatment note, you have, "Hard to focus," in  
3 quotes. Umm. And do you recall why Mr. Kelley might  
4 have said that?

5 A. No.

6 Q. Over the course of your treatment of him, did  
7 he describe difficulties in focusing?

8 A. I don't recall.

9 Q. Well, was any ability -- or inability of him  
10 to focus, was that ever something that was a concern for  
11 you?

12 A. Umm. No.

13 Q. Okay. I'm going to turn to the note at the  
14 bottom of the page, the July 5th, 2016, note. It looks  
15 like several of these topics we've talked about before,  
16 the history of bullying, and on the third or fourth line  
17 there, umm, financial stressors. Umm. On the second to  
18 the bottom line, it says, "History of wife cheating."  
19 Do you see that?

20 A. Yes.

21 Q. Do you recall specifically what was talked  
22 about at that time?

23 A. No, I do not.

24 Q. Was -- The cheating of his prior wife, is that  
25 something that came up multiple times during his

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1 treatment with you?

01:17

2 A. Yes. It -- I mean, it appears so based off of

01:17

3 my notes. [Laughed].

01:17

4 Q. Well, was it something that was particularly

01:17

5 bothersome to him?

01:17

6 A. Yes.

01:18

7 Q. Do you know why it was bothersome to him?

01:18

8 A. Because he had suspicions of his current wife

01:18

9 cheating.

01:18

10 Q. And when did he make those suspicions first

01:18

11 known to you?

01:18

12 A. I don't recall the details.

01:18

13 Q. Do you recall what made him -- what behaviors

01:18

14 made him suspicious his current wife was cheating?

01:18

15 A. No, not at this time. I just know that our

01:18

16 last session in '16 was because of that.

01:18

17 Q. Okay. Umm. I'll get that -- to that in a

01:18

18 minute. Umm. That's helpful.

01:18

19 And at this time was there anything

01:19

20 unusual or concerning about his suspicions of his

01:19

21 current wife cheating?

01:19

22 A. No.

01:19

23 Q. So it sounds like you thought he had a -- some

01:19

24 reason to be suspicious versus -- I'm sure some of your

01:19

25 clients have paranoia or suspicions for no good reason.

01:19

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1 But it sounds like your understanding was that

01:19

2 Mr. Kelley had reason to potentially believe that, in

01:19

3 fact, his wife was cheating?

01:19

4 A. I don't recall.

01:19

5 Q. You could turn to the next page. This is

01:19

6 Marlowe 42 in my copy, the July 7th, 2016, treatment

01:19

7 note at top. And the -- the very first thing under

01:20

8 "SUMMARY," "Racing thoughts - can't sleep," do you

01:20

9 recall anything in more detail about that?

01:20

10 A. No.

01:20

11 Q. Do you recall during any time during the

01:20

12 course of your treatment of Mr. Kelley any specific

01:20

13 sleeping issues that he notified you of?

01:20

14 A. No, I think it was correlated to his stress.

01:20

15 Like if you perpetually think about something, it's --

01:20

16 it's going to keep you -- it can keep you from sleeping.

01:20

17 Q. So your understanding was he had a number of

01:20

18 worries, and because of those worries, he'd think about

01:20

19 them and therefore not be able to sleep? Is that fair?

01:21

20 A. Yes.

01:21

21 Q. And the third line, it looks like it says,

01:21

22 "Has," maybe, countered "a lot of bad people"; --

01:21

23 A. "Endured."

01:21

24 Q. -- is that -- that right?

01:21

25 A. "Endured."

01:21

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1 Turning to the July 19th treatment note,  
2 it looks like the, I guess, third line from the bottom,  
3 second filled in line, it says, "Medicine options." Is  
4 that what that says?

5 A. Yes.

6 Q. And then is that like an arrow being drawn  
7 from "Processed anxiety"?

8 A. Yes.

9 Q. Okay. And -- And what is the significance of  
10 the arrow?

11 A. It correlated. The medicine options were for  
12 the anxiety.

13 Q. So it seemed like during the session, you  
14 discussed different medication options for anxiety with  
15 him?

16 A. Just the possibility of utilizing medicine.

17 Q. And at -- at this time did you feel that  
18 medicine would be an appropriate option for him?

19 A. Yes. Usually I start out by not saying  
20 anything about medicine to see if coping is sufficient  
21 on its own, but then if it's not and we need a little  
22 extra, I refer them out to someone that can add medicine  
23 plus treatment.

24 Q. And is that what you did here?

25 A. Yes.

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1 Q. All right. And then the next page in the 01:27

2 file, Marlowe 40, I think this is the letter that you 01:27

3 wrote, if you'd turn to there. 01:27

4 A. Yes. Sorry. 01:27

5 Q. And is that your letter? 01:27

6 A. Yes. 01:27

7 Q. And that's your -- your signature? 01:27

8 A. Yes. 01:27

9 Q. All right. Umm. Looking at the second line 01:28

10 of the lever -- letter, umm, you refer to 01:28

11 "psychoanalysis therapy." Do you know why you used that 01:28

12 term there? 01:28

13 A. Not at the time [laughed] because we were 01:28

14 just -- No. 01:28

15 Q. Now, do you -- do you have any idea why you 01:28

16 would have put that there? 01:28

17 A. No. 01:28

18 Q. Okay. And then the next sentence, it says, 01:28

19 "Devin has consistently expressed severe anxiety." Do 01:28

20 you see that? 01:28

21 A. Yes. 01:28

22 Q. And that -- that's based off your observation 01:28

23 of him? 01:28

24 A. Yes. 01:28

25 Can -- Can I say something? I know why I 01:29

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1 put "psychoanalysis." It just came to me.

01:29

2 Q. Oh, okay.

01:29

3 A. Because sometimes if you just write "therapy,"

01:29

4 people think physical therapy or other forms of therapy.

01:29

5 So --

01:29

6 Q. Oh [laughed].

01:29

7 A. -- I put that for like mental health therapy.

01:29

8 Q. That's smart. Okay. That makes sense. Thank

01:29

9 you. Yeah, if you need to correct a statement or amend

01:29

10 something like that, that's perfectly fine, so feel free

01:29

11 to do so.

01:29

12 And then the next sentence, "Devin has

01:29

13 expressed symptoms of the following," and you list out

01:29

14 some symptoms. So these are symptoms he's expressed to

01:29

15 you during the course of treatment?

01:29

16 A. Yes.

01:29

17 Q. And then going to the very end of the letter,

01:29

18 it says, "Devin reports that the medications that have

01:30

19 worked in the past included Klonopin and Xanax." Do you

01:30

20 see that?

01:30

21 A. Yes.

01:30

22 Q. And do you know when during the course of

01:30

23 treatment he informed you that he had, in fact, been on

01:30

24 those medications?

01:30

25 A. I don't recall specifically.

01:30

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1 Q. And did you -- At this time did you feel that  
2 it would be appropriate for Mr. Kelley to be on those  
3 medications?

4 A. Yes.

5 Q. And do those medications have potential for  
6 abuse by some people?

7 A. I suppose for some.

8 Q. And did you have any concerns about Mr. Kelley  
9 abusing those medications if he were to be prescribed  
10 them?

11 A. No.

12 Q. Is this type of letter something that you  
13 typically do when clients request medication?

14 A. Umm. Sometimes, if they feel like it would  
15 help.

16 Q. Do you recall why you wrote the letter here?

17 A. He wasn't very good at expressing what was  
18 wrong specifically symptom-wise, and so it was an aid  
19 for when he went to the doctor to take it with him.

20 Q. And do you know if he ever went to the doctor  
21 to -- to get help with anxiety?

22 A. I think in one of the next notes it talks  
23 about him going to an MHMR facility.

24 Q. And do you recall whether they did, in fact,  
25 prescribe him medication?



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1 A. I don't recall.

01:31

2 Q. Due to Mr. Kelley's reported use of marijuana

01:32

3 daily, did that present any concerns regarding, umm, at

01:32

4 least those medications like Klonopin and Xanax?

01:32

5 A. No.

01:32

6 Q. Did you ever believe that Mr. Kelley was

01:32

7 exaggerating his anxiety symptoms?

01:32

8 A. No.

01:32

9 Q. Okay. We can turn to the -- the next page.

01:32

10 This is back in treatment notes, and this is Marlowe 39

01:32

11 in my copy, the July 21, 20 -- 2016, note on top.

01:33

12 A. Okay. I'm there.

01:33

13 Q. Thank you.

01:33

14 And it looks like the first line, it

01:33

15 looks like, "Wife's, maybe, "grandfather died"?

01:33

16 A. Yes.

01:33

17 Q. Does it -- Okay. And then along -- the line

01:33

18 below that says, "Danielle," and then it says, "sad

01:33

19 and" -- I can't read what's after that. Would you mind

01:33

20 reading that to me?

01:33

21 A. "Sad and crying."

01:33

22 Q. "Sad and crying." And then it says,

01:33

23 "Danielle's family conflict." Umm. Do you know what

01:33

24 that's referring to?

01:33

25 A. No.

01:33

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1 Q. So the respect in this instance would have 01:35  
2 been concerning his wife? 01:35

3 A. Yes. 01:35

4 Q. And then it looks like it said -- like it 01:35  
5 says, "Wife mood," and then there's -- there's an arrow, 01:36  
6 "real mad to real nice." Did I read that right? 01:36

7 A. Yes. 01:36

8 Q. Do you know what that's referring to? 01:36

9 A. Just the -- how tumultuous their relationship 01:36  
10 would get with the fighting, that it could be really 01:36  
11 good one minute, then really bad another. 01:36

12 Q. Was that concerning to you? 01:36

13 A. It was consistent with how things had been; so 01:36  
14 not overly. 01:36

15 Q. During the time that you treated Mr. Kelley, 01:36  
16 did you ever develop a sense through treatment about -- 01:36  
17 about his wife, about who she is -- 01:36

18 A. Not mu -- 01:36

19 Q. -- about her personality? 01:36

20 A. Not much, I mean, other than his suspicions of 01:36  
21 her cheating. I think he really wanted to work it out 01:37  
22 with her and that's why he was in therapy. That was a 01:37  
23 part of it. 01:37

24 Q. We can go ahead and turn to the next page. 01:37

25 This is Marlowe 38, a treatment note, July 28th, 2016, 01:37

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1 on top. Are you there?

01:37

2 A. Yes, sir. I'm sorry.

01:37

3 Q. No problem.

01:37

4 And here I'm looking at the "SUMMARY."

01:38

5 Umm. And this is what -- what you were referring to

01:38

6 previously. It says, "Discussed wife's sexual abuse

01:38

7 past." And do you recall anything specifically about

01:38

8 what Mr. Kelley said about her past?

01:38

9 A. Not specifically; just that he was very upset

01:38

10 that she had been hurt by her family in that way.

01:38

11 Q. Do you know why it was bothering him at this

01:38

12 particular time?

01:38

13 A. Because he endured abuse and bullying

01:38

14 throughout his life. You mean why specifically at that

01:38

15 time?

01:38

16 Q. Right. I guess -- Or what I'm looking at, at

01:38

17 this July 28th -- So I would suspect his wife would have

01:38

18 told him about any abuse sometime prior to that. So I

01:39

19 didn't know if it was a triggering event or event

01:39

20 particular to this time that made him want to talk about

01:39

21 his wife's past abuse.

01:39

22 A. No, I'm not sure specifically. Sometimes

01:39

23 stuff just comes up.

01:39

24 Q. Did he ever express violence or wanting to

01:39

25 commit violence that -- to people who had done this

01:39

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1 to -- to his wife?

01:39

2 A. No.

01:39

3 Q. And below that, it says, "Hard to

01:39

4 concentrate." Do you recall any -- anything

01:40

5 specifically about that?

01:40

6 A. No.

01:40

7 Q. Below that, it says, "Depression worse." Do

01:40

8 you recall specifically why it was worse?

01:40

9 A. No.

01:40

10 Q. Now, at the bottom there, you said that M --

01:40

11 "MHMR for medication." So that's the local clinic, I

01:40

12 think you were saying?

01:40

13 A. Right. If somebody has low to no income,

01:40

14 it's -- it's a resource for them in the community run by

01:40

15 the state.

01:40

16 Q. Thank you.

01:40

17 Okay. Let's look at the obvious second

01:40

18 treatment note. At the top, he says, "No more" -- or

01:40

19 you say, "No more anxiety or" -- "or racing thoughts."

01:41

20 Umm. Do you know why that was?

01:41

21 A. No.

01:41

22 Q. And it looks like it talks about some of the

01:41

23 issues that we've already talked about.

01:41

24 Do you recall if the reduction in anxiety

01:41

25 or racing thoughts was correlated with starting any

01:41

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1 medicine?

01:41

2 A. No, I don't recall specifically.

01:41

3 Q. You can go ahead and turn to the next page.

01:42

4 So this is my copy, Marlowe 37, the August 9th session  
5 on top. Are you with me?

01:42

01:42

6 A. Yeah.

01:42

7 Q. Great.

01:42

8 Umm. Looking again at the, umm,

01:42

9 "SUMMARY," it looks like, umm, it says, "Danielle  
10 pregnant," exclamation point?

01:42

01:42

11 A. Yes [laughed].

01:42

12 Q. [Laughed]. Umm. How did he react to his  
13 wife's pregnancy?

01:42

01:42

14 A. He was -- That kind of revamped and fueled the  
15 worry about the finances because babies are expensive.

01:42

01:42

16 Q. Was he otherwise happy about her pregnancy?

01:42

17 A. Yes.

01:43

18 Q. And then the treatment note at the bottom for  
19 August 11, umm, again, it's talking about things I think  
20 we've talked about. At the very bottom, it says, "Has  
21 money right now." Do you know why he had money at that  
22 time?

01:43

01:43

01:43

01:43

01:43

23 A. No, not specifically. Like I said, he -- his  
24 money would ebb and flow; he would have it and then not  
25 have it.

01:43

01:43

01:43

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1 your treatment with him? 01:56

2 A. Yes. 01:56

3 Q. And in looking back on your treatment today, 01:56  
4 is there anything you felt like you could have done any 01:56  
5 differently or would have done differently with his 01:56  
6 treatment? 01:56

7 A. No. 01:56

8 Q. All right. Well, let's turn to the -- the 01:56  
9 9/1/17 note. So this is Marlowe 34 in my copy. 01:56

10 A. Okay. 01:56

11 Q. So this looks to be about a year after the 01:56  
12 last time you saw him. Umm. Do you recall the 01:56  
13 circumstances and him reinitiating -- reinitiating 01:57  
14 treatment? 01:57

15 A. No, I don't recall. 01:57

16 Q. Is something like this, where a client doesn't 01:57  
17 come in for a year and then comes back, is something 01:57  
18 like that unusual? 01:57

19 A. No. 01:57

20 Q. In the period between 2016 and when he came 01:57  
21 back in 2017, had -- prior to him rescheduling, had you 01:57  
22 had any contact with him? 01:57

23 A. No. 01:57

24 Q. And during that period of time, after he last 01:57  
25 saw you in 2016 and then in 2017, do you know if he 01:57

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1 sought, you know, psychotherapy elsewhere?

01:57

2 A. No, I don't know.

01:57

3 Q. And when you saw him in September 2017, did he  
4 seem different to you than he had been about a year  
5 prior?

01:58

01:58

01:58

6 A. No. He seemed about the same.

01:58

7 Q. Was his physical appearance the same?

01:58

8 A. No. I think his hair was falling out. He had  
9 a condition or something with his skin on his head.

01:58

01:58

10 Q. Okay. Umm. What about from a mental health  
11 perspective? Was his mental health status the same or  
12 similar to when you last saw him?

01:58

01:58

01:58

13 A. No. It seemed like it was getting better.

01:58

14 Q. Getting better how? What specifically?

01:59

15 A. Well, he -- They had -- He -- His wife had the  
16 girl, so now he had his son and his baby girl. He had  
17 just got a new job as a security guard at a RV park, and  
18 he said that he had friends that had got him the job.  
19 So there was support there that hadn't been there  
20 before.

01:59

01:59

01:59

01:59

01:59

01:59

21 Q. On the first part of the "SUMMARY," it  
22 sound -- it says, "Thinks he has Asperger's diagnosis."  
23 Umm. I guess, first, what is Asperger's?

01:59

01:59

01:59

24 A. It's a form of autism.

01:59

25 Q. And do you know why he was saying that to you?

01:59

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1 A. I think he was just updating me on where he 01:59  
2 was at, and he -- It was a self-diagnosis. He had been 01:59  
3 doing some research on Google and said that some of the 01:59  
4 traits on there seemed like they fit him, and he was 02:00  
5 just sharing that with me. 02:00

6 Q. Did you have any clinical opinion as to 02:00  
7 whether or not he had Asperger's? 02:00

8 A. No, but I notated it thinking that he was 02:00  
9 going to maybe come back and we could look into it 02:00  
10 further. 02:00

11 Q. Understood. 02:00

12 And at the time he came in for this 02:00  
13 September 2017 appointment, umm, was it his intention to 02:00  
14 come back into treatment? 02:00

15 A. I think he was just touching base to see if -- 02:00  
16 I think he was really just probing the Asperger's thing, 02:00  
17 but since I didn't bite for it, he -- that might have 02:00  
18 been part of why he didn't come back. I was hoping he 02:00  
19 was initiating services. 02:00

20 Q. Sure. 02:00

21 Now, at the bottom of that note, it looks 02:01  
22 like it says, "Client was just catching up - refused 02:01  
23 further services." Is that what you were referring to? 02:01

24 A. Yes. 02:01

25 Q. So is it fair to say that you felt like he 02:01



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1 could still benefit from treatment at this time but

02:01

2 he -- he'd like to not continue?

02:01

3 A. Yes.

02:01

4 Q. Do you know whether when he stopped treatment

02:01

5 in 2016, did -- was part or any of the reason he stopped

02:01

6 coming because of any loss of Medicaid benefits?

02:01

7 A. I don't know. I don't know at that time. I

02:01

8 know that when he --

02:01

9 Q. Okay.

02:01

10 A. -- came in September seven -- 2017, he said he

02:01

11 had Medicaid, but he didn't, and so I didn't even get

02:02

12 paid for that session [laughed].

02:02

13 Q. I -- I -- Sorry. I missed that. What session

02:02

14 was that?

02:02

15 A. The September 1st, 2017.

02:02

16 Q. Oh, okay. Was there anything concerning to

02:02

17 you at all in Mr. Kelley's presentation to you during

02:02

18 that September 2017 visit?

02:02

19 A. No.

02:02

20 Q. And during the course of this visit did he

02:02

21 discuss anything about being on medication or -- or

02:03

22 medicine?

02:03

23 A. No.

02:03

24 Q. Okay. And when -- It says he refused further

02:03

25 services. Do you recall specifically the reason he gave

02:03

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1 for not wanting to come back?

02:03

2 A. No, I don't recall.

02:03

3 Q. Umm. Did you -- After this visit did you --

02:03

4 did you communicate with him at all in any way?

02:03

5 A. No, I don't think so.

02:03

6 Q. All right. We've gone through the treatment

02:04

7 notes, and I'm just going to, umm, go through a few of

02:04

8 the things -- or -- Mr. Kelley might have talked to you

02:04

9 about just to see if it was mentioned at all. Umm.

02:04

10 Before I get there, just -- I know you

02:04

11 said that he was guarded and had anxiety, umm, you know,

02:04

12 related to the history of bullying. Umm. Other than

02:04

13 some guardedness, did you have any other concerns or

02:04

14 worries about his reporting of the facts and events to

02:04

15 you?

02:04

16 A. No.

02:04

17 Q. Did you feel like he was a truthful person?

02:05

18 A. Yes, as far as I knew.

02:05

19 Q. Do you recall any instances where you might

02:05

20 have thought he might have been lying or not being

02:05

21 truthful with you?

02:05

22 A. No.

02:05

23 Q. And during the course of treatment did he ever

02:05

24 try to embellish or exaggerate problems?

02:05

25 A. No.

02:05

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1 style rifle he had purchased, an assault-type rifle? 02:15

2 Did he ever discuss that? 02:15

3 A. No. 02:15

4 Q. Did he ever talk about, other than hunting, 02:15

5 using firearms, for target shooting or for anything? 02:15

6 A. No. 02:15

7 Q. Did he ever talk about, umm, going to gun 02:15

8 shows? 02:15

9 A. No. 02:15

10 Q. Did he ever talk about purchasing or using 02:15

11 body armor of any kind? 02:16

12 A. No. 02:16

13 Q. Did he -- Other than firearms, did he talk 02:16

14 about owning or using any other types of weapons, knives 02:16

15 or anything else? 02:16

16 A. No. 02:16

17 Q. So he never discussed purchasing or wanting to 02:16

18 purchase any firearms with you; is that right? 02:16

19 A. That's right. 02:16

20 Q. Umm. Turn -- Turning back to, you know, the 02:16

21 events of November 25th -- or - sorry - November 5th, 02:16

22 2017, the Sutherland Springs church shooting, umm, when 02:16

23 you realized that Mr. Kelley was the shooter, how did 02:17

24 you -- well, what did you feel about that? 02:17

25 A. Devastated. 02:17

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1 Q. Were you surprised? 02:17

2 A. Extremely. 02:17

3 Q. Why is that? 02:17

4 A. You -- You never think somebody you're trying 02:17

5 to help is going to do such a horrific thing. 02:17

6 Q. And when you found that out, did you reflect 02:17

7 at all on your course of treatment with him? 02:17

8 A. Of course. Yes. 02:17

9 Q. And in looking back, is there anything you 02:17

10 think you should -- could have done differently? 02:17

11 A. No. 02:17

12 Q. As a trained clinician do you have any sense 02:17

13 on why Mr. Kelley -- Kelley might have done what he did? 02:17

14 MR. SCHREIBER: Objection. Calls for 02:18

15 speculation. 02:18

16 A. I have no idea. I have no idea. It was a 02:18

17 complete surprise. 02:18

18 Q. (BY MR. FURMAN) Understood. 02:18

19 And just to be clear, so the -- the -- 02:18

20 the church shooting on the -- November 5th, 2017, that 02:18

21 was nothing you could have foreseen during your 02:18

22 treatment of him as a therapist -- 02:18

23 MR. SCHREIBER: Objection. 02:18

24 Q. (BY MR. FURMAN) -- is that right? 02:18

25 MR. SCHREIBER: Calls for a legal 02:18

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1 conclusion. Calls for speculation. 02:18

2 MR. MYERS: You can answer. 02:18

3 A. Oh, I'm sorry. Was that a -- 02:18

4 Q. (BY MR. FURMAN) You can -- 02:18

5 A. -- question? 02:18

6 Q. -- answer. 02:18

7 A. What was -- Oh, can you repeat the question? 02:18

8 I'm sorry. 02:18

9 Q. [Laughed]. I -- I can. He might object 02:18

10 again. So -- 02:18

11 MR. SCHREIBER: I will. 02:18

12 A. [Laughed]. I'm sorry. 02:18

13 Q. (BY MR. FURMAN) [Laughed]. So the -- the 02:18

14 November 5th, 2017, church shooting, umm, there was no 02:18

15 way you could have possibly foresaw that event based off 02:19

16 your treatment of Mr. Kelley, was there? 02:19

17 A. Correct. 02:19

18 MR. SCHREIBER: Objection. Calls for 02:19

19 legal conclusion. Calls for speculation. 02:19

20 A. No, it was not foreseeable with my treatment. 02:19

21 Q. (BY MR. FURMAN) At any point in time did 02:19

22 you -- do you recall learning on the news or otherwise 02:19

23 about Mr. Kelley's criminal background and whether or 02:19

24 not that had been, umm, put in the FBI background check 02:19

25 system? 02:19

CANDACE M. MARLOWE  
JOE HOLCOMBE vs UNITED STATES OF AMERICA

June 18, 2020

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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXASJOE HOLCOMBE, ET AL.,  
Plaintiffs§  
§  
§  
§  
§  
§

v.

Civil No. 5:18-cv-555-XR

UNITED STATES OF AMERICA,  
DefendantREPORTER'S CERTIFICATION  
DEPOSITION OF CANDACE MCKENZIE MARLOWE  
JUNE 18, 2020

I, GLENDA I. GREEN, Certified Shorthand Reporter in  
and for the State of Texas, hereby certify to the  
following:

That the witness, CANDACE MCKENZIE MARLOWE, was  
duly sworn by the officer and that the transcript of the  
oral deposition is a true record of the testimony given  
by the witness;

That examination and signature of the witness to  
the deposition transcript was waived by the witness and  
agreement of the parties at the time of the deposition;

That the amount of time used by each party at the  
deposition is as follows:

Mr. Furman - 3 hours, 57 minutes

Mr. Schreiber - 15 minutes

That \$\_\_\_\_\_ is the deposition officer's charges  
to the Defendant for preparing the original deposition  
transcript and any copies of exhibits;

CANDACE M. MARLOWE  
JOE HOLCOMBE vs UNITED STATES OF AMERICAJune 18, 2020  
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1 That pursuant to information given to the  
2 deposition officer at the time said testimony was taken,  
3 the following includes counsel for all parties of  
4 record:

5 MR. JOSEPH SCHREIBER, MS. CHELSIE KING GARZA &  
6 MR. JUSTIN B. DEMERATH, Attorneys for Plaintiffs

7 MR. AUSTIN L. FURMAN & MR. DANIEL P. CHUNG,  
8 Attorneys for Defendant

9 MR. J. GREGORY MYERS, Attorney for Witness

10 I further certify that I am neither counsel for,  
11 related to, nor employed by any of the parties or  
12 attorneys in the action in which this proceeding was  
13 taken, and further that I am not financially or  
14 otherwise interested in the outcome of the action.

15 Certified to by me this 19th day of June, 2020.

16 

17  
18 GLENDA I. GREEN, Texas CSR 2194  
19 Expiration Date: 12/31/2016  
20 ESQUIRE DEPOSITION SOLUTIONS, No. 003  
21 1235 North Loop West, Suite 510  
22 Houston, TX 77008  
23 Office: 832.214.4221  
24 Email: houstonscheduling@esquiresolutions.com  
25